

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE SCHERING-PLOUGH
CORPORATION/ENHANCE
SECURITIES LITIGATION

Civil Action No. 08-397 (DMC) (JAD)

**DECLARATION OF KIM E. MILLER
IN SUPPORT OF CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED
ON BEHALF OF KAHN SWICK & FOTI, LLC**

Kim E. Miller, declares as follows:

1. I am a member of the law firm of Kahn Swick & Foti, LLC. I submit this declaration in support of Co-Lead Counsel's application for an award of attorneys' fees in connection with services rendered in the above-captioned action (the "Action").

2. My firm acted as one of Plaintiffs' Counsel in this Action. In this capacity, my firm researched, investigated, drafted and filed the initial Complaint, *Manson v. Schering-Plough Corp., et al.*, reviewed and analyzed discovery materials, drafted memoranda regarding discovery issues, and participated in conference calls with Plaintiffs' Counsel.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by each attorney of my firm who was involved in this Action who billed ten or more hours to the Action, and the lodestar calculation for those individuals based on my firm's 2013 billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for

fees and reimbursement of expenses has not been included in this request.

4. The hourly rates for the attorneys in my firm included in Exhibit 1 are the same as the regular rates that would be charged for their services in non-contingent matters.

5. The total number of hours expended on this Action by my firm from its inception through and including May 31, 2013, is 506.1. The total lodestar for my firm for that period is \$209,764.00, all of which is for attorneys' time.

6. With respect to the standing of my firm, attached hereto as Exhibit 2 is a brief biography of my firm and attorneys in my firm who were principally involved in this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on July 12, 2013.


KIM E. MILLER

EXHIBIT 1

KSF LODESTAR TOTALS BY STAFF

Name	Position	Total Hours	Billing Rate	Lodestar Total
Lewis Kahn	Partner	11.8	\$695	\$8,201
Kim Miller	Partner	14	\$675	\$9,450
Michael Swick	Partner	37.5	\$695	\$26,063
Bruce Dona	Associate	442.8	\$375	\$166,050
TOTALS		506.1		\$209,764

EXHIBIT 2



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The Firm

Kahn Swick & Foti, LLC ("KSF") (www.ksfcounsel.com) is a boutique law firm with offices in New York City and Louisiana. KSF focuses predominantly on class actions, in the areas of securities and consumer fraud, and on shareholder derivative and other complex litigation. Since its inception in 2000, KSF has recovered hundreds of millions of dollars for its clients.

The lawyers of KSF have extensive experience litigating complex cases in the following practice areas: (i) securities litigation; (ii) corporate governance and derivative litigation; (iii) consumer protection litigation; and (iv) shareholder merger and acquisition class action litigation. A sampling of the firm's current cases and recent recoveries is set forth below.

Securities Litigation

Current Cases

Archdiocese of Milwaukee Supporting Fund, et al., v. Halliburton Company, et al.

3:02-CV-1152-M

Northern District of Texas

Special Counsel for Plaintiff Class

Better, et al. v. YRC Worldwide, Inc. et al., 11-CV-2072-KHV/JPO

District of Kansas

Lead Counsel

Fifield v. Green Mountain Coffee Roasters, Inc., 2:12-cv-00091-WKS

District of Vermont

Lead Counsel

Gooden v. Smart Online et al., 1:07-cv-785-WLO

Middle District of North Carolina

Co-Lead Counsel

In re Nvidia Corporation Securities Litigation, 08-CV-4260-JW

Northern District of California

Co-Lead Counsel

Shah Rahman v. Kid Brands, Inc. et al., 11-cv-01624 (JLL) (CCC)

District of New Jersey

Lead Counsel

Recent Victories

Erica P. John Fund, Inc. v. Halliburton Co., et al., No. 12-10544 (5th Cir. 2013), Special Counsel, federal securities class action against oilfield services company and a high-level

officer, in which KSF was part of the team that obtained a unanimous decision by the Fifth Circuit affirming the district court's decision to grant class certification, which was appealed by defendants after the U.S. Supreme Court's unanimous decision discussed below.

Erica P. John Fund, Inc. v. Halliburton Co., et al., 131 S.Ct. 2179 (2011), Special Counsel, federal securities class action against oilfield services company and a high-level officer, in which KSF was part of the team that obtained a unanimous decision by the U.S. Supreme Court vacating and remanding a decision of the Fifth Circuit regarding class certification.

Roberto Cohen v. NVIDIA Corp., 11-cv-17708 (9th Cir. 2009), federal securities class action brought against technology company and certain officers and directors, in which KSF and co-counsel obtained a unanimous decision by the Ninth Circuit on a petition for writ of mandamus seeking to vacate a lead plaintiff decision. KSF is currently Co-Lead Counsel in this case.

Recent Recoveries

In re Virgin Mobile USA IPO Litigation, 2:07-cv-05619-SDW-MCA (D.N.J.), *Co-Lead Counsel*, federal securities IPO-related class action against a company providing wireless communication services, certain officers and directors, certain controlling shareholder entities, and Virgin's underwriters, resulting in a cash settlement of **\$19.5 million** for investors.

In re BigBand Networks, Inc Securities Litigation, 3:07-CV-05101-SBA (C.D. Cal.), *Co-Lead Counsel*, federal securities class action brought against a computer hardware corporation, certain officers and directors of the Company, and the Company's Underwriters, resulting in a cash settlement of **\$11 million** for investors.

In re U.S. Auto Parts Networks, Inc. Securities Litigation, 2:07-cv-02030-GW-JC (C.D. Cal.), *Lead Counsel*, federal securities IPO-related class action against an online automotive supply company, certain members of its board of directors, and its underwriters, resulting in a cash settlement of **\$10 million** for investors.

In re ShoreTel, Inc. Securities Litigation, 3:08-cv-00271-CRB (N.D. Cal.), *Lead Counsel*, federal securities IPO-related class action brought against an Internet protocol telecommunications company, certain of its officers and directors, and its underwriters, resulting in a cash settlement of **\$3 million** for investors.

In re Xethanol Corporation Securities Litigation, 1:06-cv-10234-HB (S.D.N.Y.), *Lead Counsel*, federal securities fraud class action against an ethanol production company and certain of its officers and directors, resulting in a cash settlement of **\$2.8 million** for investors.

Mongeli v. Terayon Comm. Systems Inc. et al., 4:06-cv-03936-CW (N.D. Cal.), *Co-Lead Counsel*, federal securities fraud class action brought against a communications systems corporation, the Company's outside auditor, and certain officers and directors, resulting in a cash settlement of **\$2.73 million** for investors.

In re Opteum, Inc., Securities Litigation, 2:07-cv-14278-DLG (S.D. Fla.), *Co-Lead Counsel*, federal securities fraud class action brought against a Real Estate Investment Trust and certain of its officers and directors, resulting in a cash settlement of **\$2.35 million** for investors.

In re: Meta Financial Group Inc., Securities Litigation, 10-4108-MWB, (N.D. Iowa), *Lead Counsel*, federal securities fraud class action against a bank and certain officers and directors, resulting in a cash settlement of **\$2.1 million** for investors (constituting 37.5% of maximum potential damages).

Corporate Governance and Derivative Litigation

Current Cases

In re Chesapeake Energy Corp. 2012 Shareholder Derivative Litigation CIV-12-436M
Western District of Oklahoma
Lead Counsel

Orrego v. Lefkofsky (Groupon, Inc. Derivative Litigation), No. 12 CH 12420
Circuit Court of Cook County, Illinois, Chancery Division
Co-Lead Counsel

Recent Recoveries

In re Bank of America Corp. Securities, Derivative, and Employment Retirement Income Security Act (ERISA) Litigation, 09 Civ.580 (DC) (S.D.N.Y.). As Co-Lead Counsel in this shareholder derivative action filed in the Southern District of New York on behalf of Bank of America Corp. against current and former executive officers and directors of the company related to Bank of America's January 1, 2009, acquisition of Merrill Lynch & Co., Inc. in a stock-for-stock transaction, alleging, among other things, that certain material

information was omitted from the joint definitive proxy statement filed with the Securities and Exchange Commission and mailed to stockholders on November 3, 2008 seeking shareholder consent for the issuance of shares necessary to consummate the Merger and certain other related matters and that the individual defendants breached their fiduciary duties in connection with the merger. KSF helped obtain a novel settlement with the defendants in which Bank of America agreed to adopt extensive corporate governance reforms that directly address the alleged deficiencies that gave rise to this action and are directly tailored towards avoiding a recurrence of the failures alleged in the action, including the formation of a board-level committee to oversee certain future acquisitions, and which resulted in a **\$62.5 million** cash payment to Bank of America.

In re Barnes & Noble Stockholder Derivative Litigation, C.A. No. 4813-VCS (Del. Ch. Ct.). As Co-Lead Counsel in this shareholder derivative action filed in the Court of Chancery of the State of Delaware on behalf of Barnes & Noble, Inc. against certain of its officers and directors, including Chairman Leonard Riggio, related to the company's 2009 acquisition of Mr. Riggio's private company Barnes & Noble College Booksellers, Inc., alleging that the purchase price, and the process by which it was agreed to, was not entirely fair to Barnes & Noble, Inc. and harmed shareholders, KSF helped obtain a settlement resulting in the recovery of **\$29 million** for Barnes & Noble, Inc. in the form of reductions to the principal and interest payable to Mr. Riggio

In re Moody's Corporation Shareholder Derivative Litigation, No. 1:08-CV-9323 (S.D.N.Y.). As Lead Counsel for the demand-excused shareholder derivative actions filed on behalf of Moody's Corporation against current and former executive officers and directors of the company, asserting various claims, including for breach of fiduciary duty, in connection with, inter alia, Moody's credit ratings on various mortgage-backed securities, KSF helped obtain a settlement in which the settling defendants agreed that Moody's had implemented or will adopt, enhance and/or maintain certain governance, internal control, risk management and compliance provisions, designed to identify, monitor and address legal, regulatory and internal compliance issues throughout the business and operations of Moody's Investors Service, Inc., the credit rating agency operating subsidiary of the company

In re Morgan Stanley & Co., Inc. Auction Rate Securities Derivative Litigation, No. 1:08-CV-07587-AKH (S.D.N.Y.). As Lead Counsel for shareholders in this federal derivative action against a prominent broker-dealer to redress harms to the company from its sales and marketing of auction rate securities, KSF obtained substantial corporate governance reforms that promised to avoid a recurrence of similar harms in the future.

Weil v. Baker, No. 08-CA-00787-SS (*In re ArthroCare Corp. Securities Litigation*, No. 08-cv-574-SS) (W.D. Tex.). As Co-Lead Counsel in the consolidated federal derivative action on behalf of ArthroCare Corporation against certain of its officers and directors arising from alleged improprieties in the company's marketing of spine wands, KSF helped obtain a cash settlement of **\$8 million**, along with important corporate governance changes.

In re ProQuest Co. Shareholder Deriv. Litig., No. 2:06-cv-11845-AC-MKM (E.D. Mich.). As Co-Lead Counsel in a federal derivative action filed on behalf of ProQuest (now Voyager Learning Company) against certain of its officers and directors, KSF helped obtain a settlement including important corporate governance changes.

Consumer Protection Litigation

Current Cases

Sterling Savings Bank v. Poleline Self-Storage LLC, No. CV-09-10872 (Idaho Dist. Ct.), *Counsel for counter-plaintiff and proposed class representative*. In this putative class action, a borrower alleges that the Bank improperly used the 365/360 method of interest calculation on several commercial loans. A settlement is pending which would result in a **\$3.5 million** recovery for bank customers.

Sean Turnbow, et al. v. Life Partners Inc., et al., No. 3:11-CV-1030-M (N.D. Tex.), *Interim Co-Lead Class Counsel*. Putative nationwide class action on behalf of consumers (and a Subclass of California residents) who purchased or otherwise acquired fractional interests in life settlements from Life Partners Inc. Life settlement transactions involve the sale of an existing life insurance policy to another party whereby the selling policyholder receives an immediate cash payment. The complaint alleges that Life Partners Inc. and other Defendants negligently disregarded that the life expectancy assessments provided to Class members were materially inaccurate, resulting in overpayments by Class members for their investments.

Recent Recoveries

In re: General Motors Corp. Speedometer Products Liability Litigation, MDL No. 1896, *Co-Lead Counsel*. Appointed co-lead counsel for national class of 4.2 million purchasers of certain GM trucks with defective speedometers. The case was resolved successfully by GM agreeing to fix defective speedometers for free and to reimburse class members for all past repair costs.

Rose Goudeau, et. al. v. The Administrators of the Tulane Educational Fund, et. al., No. 2004-04758, Sec. 13, Div. J (Civil District Court for the Parish of Orleans), *Class Co-Counsel*. Nationwide class action certified on behalf of near relatives of individuals who donated their bodies to the Tulane Willed Body Program. The complaint alleged that the Tulane Willed Body Program sold the donated bodies and/or body parts to third parties. A settlement of **\$8,300,000** was obtained for the class members.

Shareholder M&A Class Action Litigation

Current Cases

In re EnergySolutions, Inc. Shareholder Litigation, C.A. 8203-VCG
Delaware Court of Chancery
Plaintiff's Counsel

In re Medtox Scientific, Inc. Shareholders Litigation, Court File No. 62-CV-12-5118
District Court for the Second Judicial District, Ramsey County, Minnesota,
Plaintiffs' Counsel

Sachs Investment Group v Sun Healthcare Group, Inc., et al.
30-2012-580354-CU-SL-CXC
Superior Court of California, County of Orange
Plaintiffs' Counsel

Sucessfully Resolved Cases

In re Adams Golf Shareholder Litigation, C.A. No. 7354-VCL (Del. Ch. 2012). *Chair of Plaintiffs' Executive Committee*. Class action for breach of fiduciary duties to shareholders relating to a proposed merger. Settlement consisted of additional material disclosures to proxy statements.

Golub v. Case Pomeroy & Co., Inc., C.A. No. 2449-N (Del. Ch. 2007). *Co-Lead Counsel*. Class action for breach of fiduciary duties to shareholders in connection with a proposed merger. Settlement comprised additional material disclosures in proxy materials.

Attorneys Involved in this Securities Litigation

Partners

Lewis S. Kahn

Lewis Kahn is the founding partner of KSF and serves as the firm's managing partner. A substantial portion of Mr. Kahn's practice is devoted to representing shareholders in connection with losses suffered as a result of securities fraud, and in shareholder derivative litigation.

Mr. Kahn manages the firm's portfolio monitoring program for public and private institutional investors. Additionally, Mr. Kahn oversees the firm's lead plaintiff motion practice in PSLRA class action litigation, and serves on the firm's settlement team, which has been responsible for settlements including *In re Virgin Mobile USA IPO Litigation*, 2:07-cv-05619-SDW-MCA (**\$19.5 million settlement**), *In re BigBand Networks, Inc Securities Litigation*, 3:07-CV-05101-SBA (**\$11 million settlement**), and *In re U.S. Auto Parts Networks, Inc. Securities Litigation*, 2:07-cv-02030-GW-JC (**\$10 million settlement**).

In addition to securities lawsuits, Mr. Kahn has significant experience with consumer fraud and mass tort class actions. Mr. Kahn has been appointed to various leadership positions in federal class action litigation.

Mr. Kahn holds a Bachelor's degree from New York University and received a Juris Doctor from Tulane Law School in 1994. He has been a member of the Louisiana State Bar Association since 1995, and is admitted to practice law before the United States Supreme Court, United States Court of Appeals for the 2nd Circuit, and the United States District Courts for the Eastern, Middle and Western Districts of Louisiana.

Michael A. Swick

Michael A. Swick is the co-founding partner of KSF and heads the firm's Securities Litigation Group. Mr. Swick has worked at some of the nation's leading securities class action law firms.

Over the past 15 years, Mr. Swick has played a significant role in investigating large corporate frauds and in initiating litigations against the nation's largest corporations. On behalf of shareholders, Mr. Swick has initiated actions in a number of federal courts, primarily

seeking to recover for violation the Securities Act of 1933 and the Securities Exchange Act of 1934.

Recent actions have resulted in tens of millions of dollars of recoveries for investors. Over his career, Mr. Swick has also participated in the litigation of cases that have resulted in hundreds of millions of dollars in recoveries for aggrieved shareholders and institutional investors.

Mr. Swick also works closely with the firm's institutional investor clients and participates in the management and development of KSF's portfolio monitoring systems.

Mr. Swick received a Juris Doctor from Tulane Law School in 1994. Mr. Swick received a Masters of Political Philosophy from Columbia University in 1989 and a B.A. in Philosophy and Political Science from State University of New York at Albany in 1988. Mr. Swick was admitted to the State Bar of New York in 1997 and is admitted to practice before the United States District Court for the Southern District of New York.

Kim E. Miller

Kim E. Miller is a KSF partner who specializes in securities litigation and other complex class action litigation. Ms. Miller also supervises the New York City office of KSF. Prior to joining the firm in 2006, Ms. Miller was a partner at one of the nation's leading plaintiff class action firms. Ms. Miller also spent two years as a securities litigator on the defense side.

Over the course of her career, Ms. Miller has represented many thousands of harmed investors in class actions filed throughout the country. In a recent Order and final judgment in which KSF served as Lead Counsel, *Elgaouni v. Meta Financial Group, Inc.*, 10-4108-MWB (N.D. Iowa) (June 29, 2012) (Bennett, J.) the Federal District Court noted:

"Indeed, I find that this action has been a model of how complex class actions should be conducted. Counsel for the Lead Plaintiff, Kim Miller, and her firm, Kahn Swick & Foti, L.L.C., and [Defense Counsel] showed the utmost professionalism and civility, required very limited court intervention while diligently pursuing their objectives, and sought and obtained a fair and reasonable settlement before incurring substantial costs for discovery and trial preparation, all to the benefit of the Lead Plaintiff, Class Members, and the Defendants....I applaud their skill, expertise, zealotness, judgment, civility, and professionalism in putting the best interests of their respective

clients first and not only foremost, but exclusively ahead of their law firms' financial interests. Ms. Miller and [Defense Counsel] and their respective law firms earned my unyielding admiration and respect in this case for the efficient and exceptionally reasonable way in which they found a prompt, fair, and equitable solution to the complex problems their clients faced in this litigation, and they accomplished all of this with virtually no judicial intervention. In sum, my only deeply held regret in this case is that bioscience has not sufficiently advanced to allow the cloning of Ms. Miller and [Defense Counsel] for lead counsel roles in all complex civil class action litigation in the Northern District of Iowa."

At another recent settlement hearing in which KSF served as Lead Counsel, *In re ShoreTel, Inc. Sec. Litig.*, 3:08-cv-00271-CRB (N.D. Cal.), the Federal District Court (Breyer, J.) noted, with respect to Ms. Miller, "You're one of the best lawyers to appear in front of me in a long time..."

In addition to litigating many securities fraud and IPO-related securities cases, Ms. Miller has worked extensively on cases involving allegations of improper directed brokerage arrangements and excessive charges in mutual fund cases brought pursuant to the 1934 Securities Exchange Act and/or the Investment Company Act of 1940. She was also involved in the mutual funds late trading/market timing litigation. Ms. Miller's class action trial experience includes participating as a trial team member in a four-month jury trial involving fraud-based claims the resulted in a jury verdict in favor of Plaintiffs and the Class.

In the course of her career, Ms. Miller has been involved in a variety of cases in which large settlements were reached, including:

- **Settlement value of \$127.5 million** *Spahn v. Edward D. Jones & Co., L.P.*, 04-cv-00086-HEA (E.D. Mo.)
- **\$110 Million Recovery.** *In re StarLink Corn Products Liability Litigation*, MDL No. 1403 (N.D. Ill.)
- **\$100 Million Recovery.** *In re American Express Financial Advisors, Inc. Sec. Litig.*, 1:04-cv-01773-DAB (S.D.N.Y.)

Ms. Miller is KSF's lead litigator in its securities class action practice. While at KSF, Ms. Miller has supervised all aspects of the following successful litigations, among many others: *In re*

Virgin Mobile USA IPO Litig., 2:07-cv-05619-SDW-MCA (**\$19.5 million settlement**), *In re BigBand Networks, Inc. Sec. Litig.*, 3:07-CV-05101-SBA (**\$11 million settlement**), and *In re U.S. Auto Parts Networks, Inc. Sec. Litig.*, 2:07-cv-02030-GW-JC (**\$10 million settlement**).

Ms. Miller is also currently the lead litigator in the following cases in which KSF is Lead or Co-Lead Counsel: *Shah Rahman v. Kid Brands, Inc.* 11-cv-01624 (D. N.J.), *Stan Better and YRC Investors Group v. YRC Worldwide, Inc. et al.*; 2:11-cv-02072-KHV-JPO District of Kansas Co-Lead Counsel, *In re Nvidia Corp. Sec. Litig.*, 08-CIV-4260-JW (N.D. Cal.), *Gooden v. Smart Online, et al.*, 1:07-cv-785-WLO (M.D.N.C.).

Ms. Miller is also currently the lead litigator for the firm in its role as Special Counsel for Plaintiffs in *Archdiocese of Milwaukee Supporting Fund, et al., v. Halliburton Company, et al.*, 3:02-CV-1152-M (N.D. of Texas).

After graduating with honors from Stanford University in 1992 with a double major in English and Psychology, Ms. Miller earned her Juris Doctor degree from Cornell Law School, *cum laude*, in 1995. While at Cornell, Ms. Miller was the Co-Chair of the Women's Law Symposium, Bench Brief Editor of the Moot Court Board, and a member of the Board of Editors of the Cornell Journal of Law & Public Policy. She was also a judicial intern for The Honorable David V. Kenyon in the Central District of California. Her *pro bono* work includes representing families of 9/11 victims at *In re September 11 Victim Compensation Fund* hearings. Ms. Miller has also served as a fundraiser for the New York Legal Aid Society. She is admitted to practice in the States of California and New York and before the United States District Courts for the Southern and Eastern Districts of New York and the Northern, Southern, and Central Districts of California. She is also admitted to the United States Courts of Appeal for the Second, Fifth, Ninth and Eleventh Circuits.

Associates

Bruce W. Dona

Bruce Dona, an associate in KSF's New York office, focuses on federal securities class action, shareholder M&A litigation, antitrust, and shareholder derivative litigation. He is actively involved in cases pending before various federal and state courts across the United States.

Mr. Dona received his J.D. from George Washington University Law School in 2009. During the summer of 2007, he studied international trade law and comparative mergers and acquisitions in Rio de Janeiro, Brazil. He received his B.A. in 2004 with a double major in International Affairs and Foreign Languages (Spanish and French) from Lewis and Clark College. He is fluent in Spanish, French and Portuguese.

Mr. Dona is admitted to practice in New York and is a member of the New York State Bar Association.